State of Connecticut
OFFICE OF CONSUMER COUNSEL

TEN FRANKLIN SQUARE
NEW BRITAIN, CONNECTICUT 06051
Telephone (860) 827-2900
www.ct.gov/occ

**Energy and Technology Committee**
**February 14, 2023, Public Hearing**

**Testimony of Claire E. Coleman, Consumer Counsel**

**Proposed S.B. No. 7**
***An Act Strengthening Protections for Connecticut's Energy Consumers***
**Raised S.B. No. 966**
***An Act Concerning the Procurement of Standard Service Electricity and the Regulation of Public Utilities***

Thank you for the opportunity to submit testimony today in support of **Proposed Senate Bill No. 7 and Raised Senate Bill No. 966.** If enacted, S.B. 966 would reform our current regulatory framework for investor-owned utilities in significant ways. Several of the proposed changes would benefit consumers by strengthening utility oversight and by codifying certain utility expenses as costs that cannot be recovered from ratepayers. I welcome this continued effort to reform our utility regulatory framework, following important steps this Committee took in passing the Take Back Our Grid Act in 2021. It is needed. Our residents and small businesses are hurting under the unfair burden of high electricity prices. They need and deserve more affordable rates, and yet due to supply challenges and grid infrastructure investments, electric bills continue to go up, all while our utilities make record shareholder earnings. That's not just, reasonable, or fair. So I understand consumers' frustration – as well as the frustration of this Committee and the General Assembly, and I am grateful for the proactive approach that this Committee continues to take to help move us in the right direction.

Further reform is also necessary because we live in a time of great change. Global energy markets are transforming, new technology is emerging, and the climate is changing, placing strain on our grid and making investments in new infrastructure necessary. Our regulatory structure for utilities needs to adapt to keep pace. We must enhance it to improve our oversight and vetting of utility costs, operations, and performance.

My office is fiercely committed to making energy affordable for all. While we recognize there is a long way to go on this front, my team and I will continue to act with urgency and creativity to fight increases in the price of electricity and minimize distribution and transmission costs. Since I joined the Office of Consumer Counsel (OCC) just over a year ago, we have made a real difference for ratepayers, especially the most vulnerable. I want to take a moment to highlight some of OCC's recent achievements:

- We have won millions of dollars in ratepayer savings through vigorous advocacy in the annual proceedings – known as the revenue adjustment mechanism or RAM dockets – in

which the Public Utilities Regulatory Authority (PURA) reviews and adjusts Eversource's and United Illuminating's prior year's revenue recovery;

- We initiated a thorough investigation before PURA into the debt collection practices of our utilities, resulting in a $3 million dollar settlement payment from Avangrid to Operation Fuel for Avangrid's failure to notify customers that were subject to wage garnishment actions of the availability of the COVID-19 payment plan;

- We drafted a data sharing agreement and facilitated discussion between Department of Social Services and the electric distribution companies that resulted in a pathway for utility customers eligible for DSS benefit programs to be automatically determined eligible for hardship status and related protections;

- We provided substantial rate design expertise in support of PURA's development of a low-income discount rate – part of a broader effort under my direction to make energy equity a stronger focus of our office;

- Similarly, in the two major rate cases that are currently before PURA – Aquarion Water Company (awaiting PURA's proposed decision) and United Illuminating (about to enter the hearing phase) – we submitted extensive expert testimony on affordability and low-income issues, such as improved performance metrics, in addition to seeking to strike all unnecessary and unjustified costs and expenses;

- In the performance-based ratemaking docket (PBR Docket), the OCC has encouraged PURA to adopt strategies to explicitly integrate social equity into foundational regulatory considerations, and to ensure a diverse range of stakeholders can meaningfully inform metric design.

Overall, we are pleased to help the Committee as it considers the reforms proposed by S.B. 966. Below we highlight the sections of the bill that we support. We also discuss sections where the proposed language requires clarification or an amendment before we can offer a position. In the end, we would welcome further discussion with the Committee on possible changes to the proposed language.

**S.B. 966 would implement several changes that the OCC supports, including but not limited to:**

The first is in **Section 20**: a study by PURA of Connecticut's current procurement processes. At the onset of this legislative session, many of us listening today participated in a multi-state joint technical meeting to discuss our current procurement practices and heard perspectives from our regulatory counterparts in other states, our electric distribution companies, our grid operators and legislators – all reaching a similar conclusion. Given changes in the energy markets and progress with the clean energy transition, it is an appropriate time for PURA to evaluate Connecticut's current procurement plan (last updated in 2018) and our utilities' practices under that plan, to do so with stakeholder participation, and to then determine

whether any changes should be made. The OCC looks forward to being an active participant in any such study.

The OCC strongly supports the provisions – found in **Sections 2, 3, and 9** – disallowing recovery of certain costs, including costs associated with participation, preparation, notices, or appeal of any contested proceeding for all public service companies, membership dues, lobbying expenses, and advertising expenses not otherwise approved or directed by the Authority. The OCC agrees that ratepayers should not be responsible for these costs, which generally only benefit the utilities, are not necessary for the provision of service, and are not directly required by the state. The OCC has long argued against ratepayer funding for such activities like lobbying: most recently before the Federal Energy Regulatory Commission in Docket RM22-5 and before PURA in the last three major rate cases, Connecticut Water's rate application in Docket No. 20-12-30, the Aquarion Water Company's rate application in Docket No. 22-07-01, and Avangrid's pending rate application in Docket No. 22-08-02.[1] As drafted, Sections 2, 3, and 9 will make it clear that it is inappropriate for ratepayers to pay these costs – and that clarity will not only lower ratepayer costs overall, but also improve regulatory efficiency. The OCC, PURA, and other stakeholders will not have to repeatedly litigate these cost recovery issues in future rate cases. More focused rate cases will allow PURA and the OCC to target finite resources on issues of greater importance to Connecticut's ratepayers.

The OCC also supports the reforms outlined in **Sections 10 and 11** that would essentially allow PURA to initiate a rate hearing at its discretion and that also create a more uniform regulatory framework by adding water companies to the four-year review and six-year audit standards. This reform would resolve several issues we currently experience in our rate-setting process and it might even eliminate the need for several other provisions of S.B. 966. It is appropriate to establish the same level of scrutiny and oversight for each essential service – electricity, natural gas, and water.

**Some sections of SB 966 require further clarification or amendment:**

**Section 1** would modify existing statute to empower PURA to decide whether distribution revenues will be decoupled from the volume of natural gas or electricity sales and to determine any applicable decoupling mechanism and methodology. Under our current decoupling framework, if a distribution utility does not earn its allowed revenue, as determined by PURA, it can make up the difference via a surcharge on ratepayers' bills. Conversely, when a distribution utility earns more than its allowed revenue, the excess revenue is redistributed to ratepayers via a credit on ratepayers' bills.

The purpose of revenue decoupling is to remove the incentive for distribution utilities to maximize the volume of their sales to boost their revenues. It frees distribution utilities to invest in energy efficiency and distributed generation – proven resources that save customers money

[1] For example, OCC issued interrogatories to Avangrid to confirm that it is not requesting recovery of any lobbying/public advocacy costs in its current rate case.

and support grid resiliency, but that can otherwise reduce utility revenues significantly.[2] Decoupling also has the potential to provide even greater benefit to ratepayers with the electrification of our building and transportation infrastructure.[3]

The OCC recognizes the concern that revenue decoupling can create scenarios where utilities are essentially guaranteed revenues that should be subject to a higher degree of scrutiny. Yet decoupling works both ways – when a utility collects more revenue than it is allowed, decoupling ensures that the excess revenue is redistributed to ratepayers. The OCC agrees with PURA that it is not appropriate for utilities to recover lost revenues associated with underperformance, for example, where extended power outages after storm events are due to utility failure to plan for such events. However, restricting the scope of revenue decoupling will increase administrative and docket complexity, make decoupling adjustments more contentious, and invite additional carve-outs that could undermine the overall effectiveness of any decoupling mechanism. OCC would like more information on how the Committee sees Section 1 working in practice and would respectfully request that more guardrails be considered to ensure that future PURA administrations exercise the discretion afforded in a manner consistent with the objectives of the General Assembly.

**Section 4** seeks to change the statute addressing settlements from requiring PURA to "encourage" the use of settlements to requiring PURA to "permit" the use of settlements. It also adds other procedural reforms, as well as a three-year limit on settlement terms. The OCC agrees that settlements should only be used when they have the potential to benefit consumers, for example, by offering solutions that are beyond the normal purview of PURA or to resolve a time-sensitive matter.

Under existing statute, PURA is under no obligation to accept any settlements. Currently, settling parties file a motion seeking PURA's acceptance of a proposed agreement, PURA holds a hearing on the proposed settlement, and PURA is then free to deny the motion, modify it, incorporate some parts but not others into its own Final Decision, or proceed however else the Authority sees fit. Furthermore, PURA already needs to ensure that any proposed settlement conforms to the principles set forth in General Statutes Section 16-19 before approving it.

Section 4 therefore appears to be, in part, a codification of existing practice and legal requirements. One amendment that could help resolve OCC's hesitation on this section would be to remove the three-year limitation on settlement terms, which could significantly curtail settlement use and benefits, especially given PURA staff recently proposed considering longer stay-out periods as part of a multi-year rate plan strategy in the straw proposal for the PBR Docket. It should be noted that the OCC does support the other procedural protections found in Section 4. The OCC is not always a party to a settlement, for example when PURA's Education Outreach and Enforcement Division files a settlement with PURA, so the expanded

[2] About the Alliance | Alliance to Save Energy (ase.org), https://www.ase.org/resources/utility-rate-decoupling-0.
[3] With The Shift Toward Electrification, Decoupling Remains Key For Driving Decarbonization | ACEEE, https://www.aceee.org/blog-post/2020/08/shift-toward-electrification-decoupling-remains-key-driving-decarbonization.

notice requirement will benefit consumers as well.

**Section 18** allows the operations of any non-profit agency engaged in energy assistance programs to be appropriated through the annual assessment on utility companies. The OCC is a strong supporter of, and ally to, our non-profit agencies engaged in energy assistance programs, like our Community Action Agencies and Operation Fuel. OCC looks forward to learning more about the intent of the proposed expanded role of the energy assistance agencies, and supports increased funding so long as eligible non-profits are funded by shareholder funds, as proposed in the bill, and these costs are not recoverable from ratepayers. However, given the likelihood of the utilities raising constitutional challenges to mandatory shareholder funding for this purpose, to the extent that the Committee is considering relying on additional ratepayer funding for non-profit energy assistance programs, the OCC must raise potential concerns now. Ratepayers already fund the utility matching payment programs, arrearage forgiveness programs, Operation Fuel's energy assistance program, the new low-income-discount rate, and other affordability measures. While the OCC has been a strong advocate and proponent for all of these crucial programs that will enable low-income customers to more feasibly pay their bills, which in the end will help all ratepayers as it reduces arrearages, these costs should be considered before adding additional energy assistance program costs to electric bills. This is particularly true given that many non-profits have access to private foundation grant funding or other state appropriated funds. The OCC also believes that any entity that is funded through the proposed annual assessment on utility companies should be subject to the same public budgetary processes required for PURA, OCC, and BETP.

**Section 19** would allow stakeholder groups to be compensated for their substantial contributions to PURA proceedings, as determined by the Authority. The OCC believes that this new program could potentially benefit ratepayers by expanding the depth and range of participation before PURA. However, the details of any such program will matter greatly.

To ensure the program is effective – both in terms of its cost and to encourage the productive engagement of intervenors before PURA – the OCC recommends that a full study be conducted by members of this Committee and representatives from the appropriate state agencies, prior to enacting any legislation. This study should review intervenor compensation programs from other states and make recommendations on best practices in order to maximize the benefit to ratepayers.

It is our understanding that the language in Section 19 was partly derived from recent New York legislation, which was not enacted,[4] and perhaps also from California's existing

[4] The OCC believes that the New York proposal was recently vetoed by Governor Kathy Hochul, *see* NY State Senate Bill S3034A (nysenate.gov), https://www.nysenate.gov/legislation/bills/2021/s3034/amendment/a; *a*nd Governor Hochul appointed New York's first state consumer advocate instead, Governor Hochul Announces Richard Berkley to Join Department of Public Service as Consumer Advocate | Governor Kathy Hochul (ny.gov), https://www.governor.ny.gov/news/governor-hochul-announces-richard-berkley-join-department-public-service-consumer-advocate.https://www.nysenate.gov/legislation/bills/2021/s3034/amendment/a; and that Governor Hochul appointed New York's first state consumer advocate instead, *see* Governor Hochul Announces Richard Berkley

intervenor compensation program. While that program has had some success, the OCC has learned of implementation challenges there, including litigation around intervenor eligibility and compensation issues.

As it considers Section 19, the Committee should add guardrails (1) to prohibit duplicative intervenor efforts from receiving compensation, (2) to ensure thorough and transparent review of spending justifications, as is done in California, (3) to create income qualifications to demonstrate need so that organizations that are eligible for other sources of funding (for example, foundation grants) would still be motivated to seek those resources, and (4) to ensure that the OCC's statutory authority to participate in PURA proceedings and to conduct state and federal litigation on behalf of ratepayers is not impaired in any way. We believe it is in Connecticut's best interests to consider each intervenor compensation model carefully and to fully flesh out the logistics of any new program before we move forward with legislation. We would be happy to speak with members of the Committee regarding our recommendations on best practices for this potential program.

Thank you for the opportunity to provide testimony on Proposed S.B. 7 and Raised S.B. 966.

Should you have any questions, please do not hesitate to contact me at Claire.E.Coleman@ct.gov or Brooke Parker, OCC Communications & Legislative Program Manager, at 860-827-2914 or Brooke.Parker@ct.gov.

to Join Department of Public Service as Consumer Advocate | Governor Kathy Hochul (ny.gov), https://www.governor.ny.gov/news/governor-hochul-announces-richard-berkley-join-department-public-service-consumer-advocate.